

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

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Appendix A to Part 277—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

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§ 277.1 General purpose and scope.

(a) *Purpose.* This part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and applicability.* Upon compliance with the provisions of this part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this part the term:

Accrued expenditures means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period.

Accrued income means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

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Acquisition cost refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

Disbursements refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

Expendable personal property means all tangible personal property other than nonexpendable property.

Program funds means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

Funds available to the State agency may include contributions from third parties including other Federal agencies.

In-kind contributions refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of more than \$300 per unit. A State agency may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

Obligations are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

Offset means a method to recover funds due FNS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

OMB means the Office of Management and Budget.

Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

Program means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

Program closeout means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the program in the affected project area or areas.

Project costs are allowable costs as set forth in this part.

Real property means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

State agency means the organization as defined in 7 CFR 271.1.

State agency costs means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

Subagency means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

Terms and conditions means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

Unliquidated obligation represents the amount of obligations not yet paid.

Unobligated balance means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in §272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in §283.9. State agencies must submit a budget to FNS as part of the State Plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal reimbursement rate.* The base percentage for Federal payment shall be 50 percent of State agencies' allowable Food Stamp Program administrative costs. This rate includes reimbursement for food stamp informational activities but not for recruitment activities. Recruitment activities are those activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.

(1) A State agency's federally funded share of Food Stamp Program administrative costs shall be increased when its error rate, as determined through the quality control process described in part 275, meets certain standards.

(i) For the period beginning October 1, 1982, through September 30, 1988, a State agency with a payment error rate of five percent or less in the corresponding fiscal year shall have its federally funded share of Program administrative costs increased to 60 percent, provided that the State agency's negative case error rate is less than the national weighted mean negative case rate for the fiscal year prior to the period of enhanced funding.

(ii) For the period beginning October 1, 1988, and review periods thereafter, a State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the National weighted mean negative case error rate for the prior fiscal year shall have its Federally funded share of Food Stamp Program administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

(2) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in part 282.

(3) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of parts 281 and 283.

(4) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 65 percent when the State agency's cumulative allotment error rate is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean

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negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(5) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State agency's cumulative allotment error rate is less than eight percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(6) For the 6-month period beginning October 1, 1980, a State agency with a 25 percent or greater reduction in its cumulative allotment error rate from one 6-month period to the comparable period of the next fiscal year shall be entitled to a 55 percent federally funded share of Food Stamp Program administrative costs; provided that, effective with the 6-month period beginning October 1, 1981, the State agency's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(7) Beginning October 1982, the federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in §275.23. The rates of Federal funding for the activities identified in paragraphs (b)(2) and (b)(3) of this section shall not be reduced based upon the agency's payment error rate.

(8) Employment and training program grants, as outlined in §273.7(d) shall be 100 percent federally-funded.

(c) *Matching costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

(f) The expenses (e.g. travel, lodging, meals) of persons working with volunteer or nonprofit organizations which receive training and assistance pursuant to §272.4(d)(2) are not allowable.

(g) Investigations of authorized retail or wholesale food concerns when performed in coordination with the USDA Office of Inspector General and FNS shall be funded at the 50 percent Federal reimbursement rate.

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§ 277.5 Methods of payment

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The "Letter of Credit" (LOC) (SF-1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least \$120,000 per year and meet the requirements prescribed in OMB Circular A-102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF-183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the LOC method of payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FNS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to §277.16. When a payment is withheld, payment adjustments will be made in accordance with §277.16. When FNS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without cause acceptable to FNS, FNS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its sub-agencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in §277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with §277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the

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U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in appendix A to this part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in §277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(c) The standards in §277.6(b) apply to subagencies or contractors involved with program funding.

§ 277.7 Cash depositories.

(a) The term “cash depositories” refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

§ 277.8 Bonding and insurance.

(a) *General.* In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan guarantees.* FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State agencies shall not make any assurances to any lender or contractor that FNS will furnish funds for loan payments.

§ 277.9 Administrative costs principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this part.

(b) The incremental cost of certifying TANF households for Food Stamp Program benefits are allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this part and appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FNS for review.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 385, 65 FR 33440, May 24, 2000]

§ 277.10 Program income.

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances to tribal organizations under the Indian Self-Determination Act (sections 102 through 104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with §277.13. All other sales proceeds will be handled in accordance with §277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FNS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

§ 277.11 Financial reporting requirements.

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized forms and instructions.* (1) Only forms specified by this part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in §277.11(c) shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement.

(4) The forms and instructions in this part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in §271.6(b).

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(c) *Financial status report*—(1) *Form*. State agencies shall use the standard Financial Status Report (Form SF–269) to report program costs.

(2) *Frequency*. The report (Form SF–269) shall be required quarterly.

(3) *Exceptions*. Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF–272).

(4) *Due dates*. Quarterly reports shall be due April 30 (for the period January through March), July 30 (April through June), October 30 (July through September), January 30 (October through December). Final reports are due December 30 for all completed Federal fiscal years (October 1 through September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

(d) *Time limit for State agencies to file claims*. (1) After the deadline in paragraph (c)(4) of this section for the final SF–269 report, State agencies shall use the form specified by FNS as needed within three years of the end of the Federal fiscal year to amend a prior expenditure report pertaining to such Federal fiscal year. The three-year reporting deadline may be extended by FNS if litigation, an audit, or a claim is unresolved at the end of the three-year period. The reporting form shall be used to amend prior expenditure reports, and to request reimbursement for any additional funding due, or to pay back to FNS any inadvertent prior overclaim. Requests for reimbursement will only be honored if the claim is filed within the timeframe in paragraph (d)(2) of this section. FNS reserves the right to bill State agencies for amounts due FNS resulting from an overclaim, even if no reporting form has been submitted.

(2) Subject to the availability of funds from the appropriation for the year in which the expenditure was incurred, FNS may reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency (or local agency) incurred the cost. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(3) For Automated Data Processing (ADP) expenditures approved under §277.18(c), subject to the availability of funds and required FNS approval related to the Advance Planning Document, FNS may reimburse State agencies for allowable expenditures at the appropriate rate in effect at the time the equipment or service was received only if the State agency files for a claim with FNS within two years after the calendar quarter in which the cost was incurred. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(4) States wishing to request an extension of the deadline in paragraphs (d)(2) and (d)(3) of this section must submit the request in writing to FNS prior to the applicable deadline. The State agency's request for an extension must include a specific explanation, justification, and documentation of why the claim will be late and when the claim will be filed.

(5) The time limits in paragraphs (d)(2) and (d)(3) of this section will not apply to any of the following:

(i) Any claim for an adjustment to prior year costs previously claimed under an interim rate concept;

(ii) Any claim arising from an audit exception as defined in this section. An audit exception means a proposed adjustment by the Department to any expenditure claimed by a State agency by virtue of a Federal-or State-initiated audit. The audit must comply with the requirements of §277.17 and 7 CFR part 3015, and must have been started within 3 years of the date of submission of the final SF–269 of the relevant Federal fiscal year to which it applies.

(iii) Any claim resulting from a court-ordered retroactive payment. However, this provision does not bind FNS to a State or Federal court decision when FNS was not a party to the action;

(iv) Any claim for which FNS determines there was good cause for the State agency's not filing it within the time limit. Good cause is lateness due to circumstances beyond the State agency's control such as Acts of God or documented action or inaction of the Federal Government. It does not include neglect or administrative inadequacy on the part of the State, State agency, legislature, or any of their offices or employees.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 385, 65 FR 33440, May 24, 2000]

§ 277.12 Retention and custody of records.

(a) *Retention period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on public access.* Unless required by laws, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FNS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable personal property—(1) Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FNS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than \$1,000, the State agency may use the property without reimbursement to FNS.

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(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than \$1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of \$1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS's share \$100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of title to certain property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of \$1,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, FNS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS's right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraphs (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FNS's disposition instructions.

(d) *Property management standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property*—(1) *Title*. Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use*. The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition*. When there is no longer a need for the property in the program and there is a residual inventory exceeding \$1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on non-federally sponsored activities; or,

(iii) Sell it.

(4) *Compensation*. FNS must be compensated for its share if the alternative in paragraph (e)(3)(i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and inventions*. If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any

patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with “Government Patent Policy” (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in title 37 CFR, chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FNS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal law, or Executive orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsibilities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FNS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FNS program funds meet the standards set forth in this part.

(b) *Review of proposed contracts.* State agencies shall submit proposed contracts and related procurement documents to FNS for preaward review and approval when:

(1) The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed \$10,000 specifies a “brand name” product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FNS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FNS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall

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provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1)(i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FNS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a "brand name or equal" description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

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(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small purchase procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than \$10,000. State agencies shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation*, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

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(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FNS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FNS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State agency procurement records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of \$10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act

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provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FNS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of \$2,000 for construction contracts in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1 1/2 times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FNS requirements and regulations pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of FNS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FNS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

(k) *Contract administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 277.15 [Reserved]

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with §276.4. Adjustments will be made either by adjusting the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with part 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this part and appendix A.

(c) *Offsets to the Letter of Credit.* (1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this part;

(ii) Unallowable costs resulting from audit or investigation findings;

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS; or

(iv) Amounts owed to FNS for title IV reimbursements and recipient claims collections which were reported on the FNS-209 and which the State agency has failed to pay.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program transfer or termination.* (1) When termination or transfer of a State program has been agreed upon by FNS, the following closeout procedure shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FNS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of §277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 342, 59 FR 2733, Jan. 19, 1994]

§ 277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FNS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

- (4) Internal procedures have been established to meet the objectives of federally assisted programs; and
- (5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FNS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FNS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for by State agencies meet the requirements prescribed herein, FNS shall rely on them, and any additional audit work already done.

(b) *Audit standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A-102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program," and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

- (1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.
- (2) The financial statements are presented fairly in accordance with generally accepted accounting principles.
- (3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A-102.
- (4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

- (1) The universe of Federal funds received, and
- (2) All cost categories that materially affect the award. The test is to determine whether the charges:
 - (i) Are necessary and reasonable for the proper administration of the program;
 - (ii) Conform to any limitations or exclusions in the award;
 - (iii) Were given consistent accounting treatments and applied uniformly to both federally assisted and other activities of the State agency;
 - (iv) Were net of applicable credits;
 - (v) Did not include costs property chargeable to other federally assisted programs;
 - (vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74-4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A-102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promptly notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) of this section.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant agency responsibilities.* The cognizant agency shall have the following responsibilities:

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- (1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.
- (2) Assure that all audit reports of State agencies that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.
- (3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.
- (4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.
- (5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.
- (6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.
- (7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.
- (8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraphs (d) through (f) of this section. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g) of this section.

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of ADP equipment and services used in the administration of the Food Stamp Program. Due to the nature of the procurement of ADP equipment and services, current State agency approved cost allocation plans for ongoing operational costs shall not apply to ADP system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FNS.

(b) *Definitions:*

Acceptance Documents means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

Advance Planning Document for Project Implementation or Implementation APD means a written plan of action requesting Federal financial participation (FFP) to acquire and implement ADP services and/or equipment.

Advance Planning Document for Project Planning or Planning APD means a brief written plan of action that requests FFP to accomplish the planning necessary for a State agency to determine the need for and plan the acquisition of ADP equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means an annual self-certification by the State agency on the status of project development activities and expenditures in relation to the approved Planning APD or Implementation APD. An APDU may also be submitted as needed to request funding approval for project continuation whenever significant project changes occur or are anticipated.

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Automated Data Processing or ADP means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

Automated Data Processing Equipment or hardware means:

- (1) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;
- (2) All peripheral or auxiliary equipment used in support of electronic digital computers whether selected and acquired with the computer or separately;
- (3) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic digital computer; and
- (4) Data input equipment used to enter directly or indirectly into an electronic digital computer, peripheral or auxiliary equipment, or data transmission, or communication equipment.

Automated Data Processing Services means:

- (1) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or
- (2) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation. This includes system training, systems development, site preparation, data entry, and personal services related to automated systems development and operations that are specifically identified as part of a Planning APD or Implementation APD.

Data Processing means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

Emergency situation means a situation where:

- (1) The State agency can demonstrate to FNS an immediate need to acquire ADP equipment or services in order to continue operation of the Food Stamp Program; and
- (2) The State agency can clearly document that the need could not have been anticipated or planned for and the need prevents the State from following the prior approval requirements of §277.18(c).

Feasibility Study means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems would warrant a substantial investment of staff, time, and money being requested, and whether the plan can be accomplished successfully.

Functional Requirements Specification means an initial definition of the proposed system, which documents the goals, objectives, user or programmatic requirements, the operating environment, and the proposed design methodology, e.g., centralized or distributed. This document details what the new system and/or hardware should do, not how it is to do it. The Specification document shall be based upon a clear and accurate description of the functional requirements for the project, and shall not, in competitive procurements, lead to requirements which unduly restrict competition.

General Systems Design means a combination of narrative and diagrams describing the generic architecture of a system as opposed to the detailed architecture of the system. A general systems design may include a systems diagram; narrative identifying overall logic flow and systems functions; a description of equipment needed (including processing, data transmission and storage requirements); a description of other resource requirements which will be

necessary to operate the system; a description of system performance requirements; and a description of the environment in which the system will operate, including how the system will function within that environment.

Regular funding or regular FFP rate means any Federal reimbursement rate authorized by §277.4(b).

Request for Proposal or RFP means the document used for public solicitations of competitive proposals from qualified sources as outlined in §277.14(g)(3).

Service Agreement means the document, described in §277.18(f), signed by the State or local agency and the State or local central data processing facility whenever a central data processing facility provides ADP services to the State or local agency.

Software means a set of computer programs, procedures, and associated documentation used to operate the hardware.

System specifications means information about the new ADP systems, such as: Workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data, which is required to determine the ADP equipment and software necessary to implement the system design.

System study means the examination of existing information flow and operational procedures within an organization. The study consists of three basic phases: Data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(c) *General acquisition requirements—(1) Requirement for prior FNS approval.* A State agency shall obtain prior written approval from FNS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP that it anticipates will have total acquisition costs of \$5 million or more in Federal and State funds. This applies to both competitively bid and sole source acquisitions. A State agency shall also obtain prior written approval from FNS of its justification for a sole source acquisition when it plans to acquire ADP equipment or services non-competitively from a nongovernmental source which has a total State and Federal acquisition cost of more than \$1 million but no more than \$5 million. The State agency shall request prior FNS approval by submitting the Planning APD, the Implementation APD or the justification for the sole source acquisition signed by the appropriate State official to the FNS Regional Office. However, a State agency shall obtain prior written approval from FNS for the acquisition of ADP equipment or services to be utilized in an EBT system regardless of the cost of the acquisition.

(2) *Specific prior approval requirements.* (i) For ADP equipment and services acquisitions which require prior approval as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FNS for:

(A) The Planning APD prior to entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) The Implementation APD prior to entering into contractual agreements or making any other commitment for the acquisition of ADP equipment or services.

(ii) For ADP equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) RFP's; unless specifically exempted by FNS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFPs costing up to \$5 million for competitive procurements and up to \$1 million for noncompetitive acquisitions from non-governmental sources and which are an integral part of the approved APD need not be submitted to FNS. States will be required to submit RFPs under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FNS for Request for Proposals which are associated with an EBT system regardless of the cost.

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(B) Contracts; unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts costing up to \$5 million for competitive procurements and up to \$1 million for noncompetitive acquisitions from nongovernmental sources, and which are an integral part of the approved APD need not be submitted to FNS. States will be required to submit contracts under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) Contract amendments; unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract amendment may be signed by the State agency. However, contract amendments involving cost increases of up to \$1 million or time extensions of up to 120 days, and which are an integral part of the approved APD need not be submitted to FNS. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD. Amendments to contracts for EBT systems shall be permitted within the approved funding cap. State agencies shall submit copies of any contract amendments or contract extensions to FNS with an accompanying analysis of the impact the changes would have upon the approved issuance cap.

(iii) The State agency must obtain prior written approval from FNS as specified in paragraphs (c)(2) (i) and (ii) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(3) *Approval requirements.* (i) For ADP equipment and service acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, the State agency shall submit the following documents to FNS for approval:

(A) Feasibility studies, when specifically required by FNS as a condition of approving the Planning APD. When required by FNS for approval, the State agency shall submit the feasibility study no later than 90 days after its completion.

(B) APD Updates, as required by paragraph (e) of this section, on an annual or as needed basis.

(ii) The State agency must obtain FNS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submission for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and services not requiring prior approval by FNS.

(5) *Prompt action on requests for prior approval.* FNS will reply promptly to State requests for prior approval. If FNS has not provided written approval, disapproval or a request for additional information within 60 days of FNS' letter acknowledging receipt of the State's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (c) of this section. However, provisional approval will not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such requirements remain subject to Federal audit and review.

(d) *APD content requirements—(1) Planning APD.* The State agency may request FFP for the costs of determining the need for and planning the acquisition of ADP equipment or services through the submission of the Planning APD. The State agency may request FFP for the costs of planning activities beginning with initial project inception through the performance of necessary systems and alternatives analyses, selection and design, including the completion of a general systems design. The Planning APD shall contain the following information:

(i) The State agency's description of the programmatic and organizational needs and/or problems to be addressed by the proposed ADP acquisition and the specific objectives to be accomplished under the Planning APD;

(ii) The State agency's commitment to complete the following, where appropriate, as part of project planning activities: a functional requirements specification document, feasibility study, alternatives analysis, cost-benefit analysis, and a general system design. If an existing ADP system is to be transferred, the State agency may plan to use the general system design of the transferred system.

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(iii) The State agency's description of the organization, required State and contractual resources and availability of those resources, and the assignments of roles and responsibilities for project planning activities. The State agency shall include a description of resources to be procured and procurement methods;

(iv) The State agency's schedule of activities and deliverables during project planning, including a description and schedule of procurement activities to be undertaken in support of the planning project; and

(v) A proposed budget which shall identify costs for project planning activities by Federal fiscal year. The budget shall include an estimate of prospective cost distribution to participating Federal agencies and the method for cost allocation. The State agency shall also include an estimate of the total project costs, including both the cost of the planning project and the cost of any eventual ADP equipment and/or services acquisition, which will be used only for determining whether the threshold of §§277.18(c)(1) is met. An estimate of total project cost for an EBT system shall not be required to be incorporated into the Planning APD budget.

(2) *Implementation APD.* The State agency may request FFP to acquire ADP equipment and services through the submission of the Implementation APD. The State agency may request FFP for the necessary activities to develop, acquire, install and implement the proposed ADP system or acquisition. The Implementation APD shall contain the following information, where appropriate:

(i) The State agency shall complete and submit a functional requirements specification document;

(ii) The State agency shall submit a feasibility study and associated alternatives analyses, which include the transfer or modification of an existing system from a similar State or jurisdiction in the examination of alternatives. State agencies which reject the transfer or modification of an existing system must provide an analysis describing the barriers to system transfer as part of the feasibility study. The analysis of barriers to system transfer shall include a comparison of the costs of overcoming the problem in transferring an operational system to the costs of developing a new system;

(iii) The State agency shall submit the new or transferred general systems design and shall also document the intended approaches, plans and techniques to develop or modify specific aspects of the proposed ADP system or acquisition including hardware, software, telecommunications, system testing, and data security;

(iv) The State agency shall describe the anticipated resource requirements for implementation of the ADP project, the resources planned to be available for the project, and plans for augmenting resources to meet resource requirements;

(v) The State agency shall indicate the principal events and schedule of activities, milestones, and deliverables during implementation of the project;

(vi) The State agency shall submit a proposed budget which identifies costs for intended project development and implementation activities by Federal fiscal year and shall include a consideration of all possible Implementation APD activity costs (e.g., system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses). The budget shall contain an estimate of prospective cost distribution and methods for allocating costs to participating Federal agencies;

(vii) The State agency shall document the scope, methodology, evaluation criteria and results of cost-benefit analyses for evaluating the selected design and alternatives. The cost-benefit analysis shall include a statement indicating the period of time the State agency intends to use the proposed equipment or system; and

(viii) The State agency shall describe the security and interface requirements to be employed and the backup and contingency procedures available.

(3) *APD Budget.* The proposed budget for both the Planning APD and the Implementation APD shall include cost distribution plans containing the bases for proposed rates, both direct and indirect, for costs associated with system planning, development, acquisition or implementation, as appropriate. The budget proposals accompanying the Implementation APD shall also include proposed cost distribution plans and the bases of proposed rates for the operation of the ADP system. The budget activities shall be presented on a Federal fiscal year basis in a clear fashion to associate costs with each planned activity. The budgets must identify all development costs separately

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from any ongoing operational costs. Costs must be distinguished by developmental projects and developmental time periods. Actual costs claimed must be reconcilable to projected costs as proposed and approved by FNS in the APD.

(e) *APD Update*—(1) *General submission requirements.* The State agency shall submit an APD Update for FNS approval for all approved Planning and Implementation APD's when total acquisition costs exceed \$5 million. The APD Update shall be submitted to the FNS Regional Office within 90 days after the annual anniversary date of the original APD approval, unless the submission date is specifically altered by FNS.

(2) *Content requirements.* The APD Update represents a self-certification by the State agency of project status in relation to the provisions of the approved Planning APD and Implementation APD. The Annually Updated APD shall include:

(i) Project activity status. (A) The status of all major tasks and milestones in the approved Planning APD, Implementation APD or previous APD Update's for the past year. The APD Update shall include all major tasks and milestones completed in the past year and degree of completion for unfinished tasks.

(B) The status of all project deliverables completed in the past year and degree of completion for unfinished products.

(C) Reports of past and/or anticipated problems or delays in meeting target dates in the approved Planning APD, Implementation APD or previous APD Update's for the remainder of the project. The Annually Updated APD shall include an explanation of the need to extend any major project target dates.

(ii) Project expenditures. (A) A detailed accounting for all expenditures for project development over the past year.

(B) An explanation of differences between projected expenses in the approved Planning or Implementation APD, or previous APD Update's, and actual expenditures for the past year. If changes in costs are reported, FNS may require the submission of a revised cost-benefit analysis as a condition for approval of the APD Update.

(C) Changes to the allocation basis in the approved APD's cost allocation methodology.

(iii) Changes to the approved APD.

(A) Revised language for all changes to the approved APD or previous APD Updates shall be submitted as part of the APD Update, unless submitted separately by the State agency as the changes occurred throughout the year.

(B) Changes in project management and/or contractor services.

(3) *Submission as needed.* In addition to the requirement for approval of an APD Update on an annual basis, as specified in paragraph (e)(1) of this section, the State agency may submit an APD Update on a more frequent or as needed basis, in order to obtain a commitment of FFP whenever significant project changes occur. Without such approval, the State agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APD Updates, until such time as approval is specifically granted by FNS. At a minimum, the State agency should consider submission of an APD Update whenever any of the following changes occur or are anticipated:

(i) A significant increase (\$1 million or more) in total project costs;

(ii) A significant schedule extension (60 days or more) for major milestones;

(iii) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(iv) A change in system concept, or a change to the scope of the project; or

(v) A change to the approved cost allocation methodology.

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(f) *Service agreements.* The State agency shall execute service agreements when data processing services are to be provided by a State central data processing facility or another State or local agency. Service agreements shall be kept on file by the State agency and be available for Federal review, and shall:

- (1) Identify the ADP services that will be provided;
 - (2) Include, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;
 - (3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;
 - (4) Include assurances that services provided will be timely and satisfactory;
 - (5) Include assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of §272.1(c) and §277.13;
 - (6) Require the provider to obtain prior approval pursuant to §277.18(c)(1) from FNS for ADP equipment and ADP services that are acquired from commercial sources primarily to support the Food Stamp Program and requires the provider to comply with §277.14 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the Food Stamp Program when the Program may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;
 - (7) Include the beginning and ending dates of the period of time covered by the service agreement; and
 - (8) Include a schedule of expected total charges to the Program for the period of the service agreement.
- (g) *Conditions for receiving FFP.*—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of ADP and information retrieval systems if the proposed system will:
- (i) Assist the State agency in meeting the requirements of the Food Stamp Act;
 - (ii) Meet the program standards specified in §272.10(b)(1), (b)(2), and (b)(3) of this chapter, except for the requirements in §272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FCS;
 - (iii) Be likely to provide more efficient and effective administration of the program; and
 - (iv) Be compatible with such other systems utilized in the administration of State agency plans under the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(h) *Emergency acquisition requirements.* The State agency may request FFP for the costs of ADP equipment and services acquired to meet emergency situations which preclude the State agency from following the prior approval requirements of §277.18(c). FNS may provide FFP in emergency situations if the following conditions are met:

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(1) The State agency must submit a written request to FNS prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and shall include:

- (i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;
- (ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to obtaining formal FNS approval; and
- (iii) A description of the adverse impact which would result if the State agency does not immediately acquire the ADP equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS shall provide a written response to the State agency within 14 days. The FNS response shall:

- (i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,
- (ii) Inform the State agency that FNS recognizes that an emergency situation exists and the State agency must submit a formal request for approval by FNS which includes the information specified at §277.18(d)(2) within 90 days from the date of the State agency's initial written request.
- (iii) If FNS approves the request submitted under paragraph (h)(1) of this section, FFP will be available from the date the State agency acquires the ADP equipment and services.

(i) *Cost determination and claiming costs*—(1) *Cost determination.* Actual costs must be determined in compliance with an FNS approved budget and appendix A to this part, and must be reconcilable with the FNS funding level. There shall be no payments pursuant to this section to the extent that a State agency is reimbursed for such costs pursuant to any other Federal program or uses ADP systems for purposes not connected with the Food Stamp Program. The State agency approved cost allocation plan must be amended to disclose the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS as part of the request for FNS approval of funding as required in paragraph (d)(3) of this section. Any costs funded pursuant to these regulations shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State agency shall amend the cost allocation plan required by §277.9 to include the approved APD methodology for the identification, assignment and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by §277.9.

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A-87 to identify and assign costs incurred under service agreements with the State agency. The State agency shall then distribute these costs to funding sources in accordance with paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of ADP equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than \$25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FNS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragraph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

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(4) *Claiming costs.* Prior to claiming funding under this section the State agency shall have complied with the requirements for obtaining approval and prior approval of §277.18(c).

(5) *Budget authority.* FNS approval of requests for funding shall provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization shall be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an amended State budget for payment. Requests to amend the budget authorization approved by FNS shall be submitted to FNS prior to claiming such expenses.

(j) *Procurement requirements.* (1) Procurements of ADP equipment and services are subject to the procurement standards prescribed by §277.14 regardless of any conditions for prior approval, except the requirements of §277.14(b)(1) and (2) regarding review of proposed contracts. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(2) The standards prescribed by §277.14, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local central data processing facility primarily to support the Food Stamp Program.

(3) The competitive procurement policy prescribed by §277.14 shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(k) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in suspension and/or termination of Food Stamp Program funds for the costs of the system and its operation.

(l) *Ownership rights—*(1) *Software*(i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (l)(1)(ii) of this section. FFP is not available for proprietary applications software developed specifically for the Food Stamp Program.

(2) *Automated data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which appear at 7 CFR 277.13 are applicable to automated data processing equipment.

(m) *Use of ADP systems.* ADP systems designed, developed or installed with FFP shall be used for the period of time specified in the APD, unless FNS determines that a shorter period is justified.

(n) *Basis for continued Federal financial participation.* FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that ADP resources are used for the purposes authorized. FNS will use the APD Update to monitor ADP project development. The submission of the report prescribed in §277.18(e) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of ADP project development and State and local agency ADP operations may be conducted by or for FNS to assure compliance with approved APD's, proper use of ADP resources, and the adequacy of State or local agency ADP operations.

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(o) *Disallowance of Federal financial participation.* If FNS finds that any ADP acquisition approved under the provisions of §277.18(c) fails to comply with the criteria, requirements, and other undertakings described in the approved or modified APD, payment of FFP may be disallowed.

(p) *ADP system security requirements and review process—*(1) *ADP system security requirements.* State and local agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of the Food Stamp Program. State and local agencies shall determine appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP security program.* State agencies shall implement and maintain a comprehensive ADP Security Program for ADP systems and installations involved in the administration of the Food Stamp Program. ADP Security Programs shall include the following components.

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of ADP security:

(A) Physical security of ADP resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency ADP Security Manager.

(iii) *Periodic risk analyses.* State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *ADP system security reviews.* State agencies shall review the ADP system security of installations involved in the administration of the Food Stamp Program on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for Federal on-site review.

(4) *Applicability.* The security requirements of this section apply to all ADP systems used by State and local governments to administer the Food Stamp Program.

(5) *Costs.* Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level.

[Amdt. 319, 55 FR 4355, Feb. 7, 1990, as amended by Amdt. 345, 57 FR 11259, Apr. 1, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 368, 61 FR 33643, June 28, 1996; Amdt. 385, 65 FR 33440, May 24, 2000]